

**PREVAILING WAGE COMMISSION MEETING
NOVEMBER 30, 2011
MINUTES**

**PRESENT: COMMISSIONER KARLA DAVIS
 BRENT HALL
 BOB OLEGSBY
 WAYBURN CRABTREE
 R.T. SUMMERS**

Recorded by: Christina J. Tugman

Please note this transcript is not a word-for-word account. Some general discussion and comments have been omitted for the sake of brevity.

I. Call to Order and Roll Call

Christina J. Tugman called the meeting to order at 9:00 a.m. with all Commission members stating their names for the record.

II. Conflict of Interest Declaration

Commissioner Davis asked the commission members if they had anything to declare under Conflict of Interest. R.T. Summers stated that he is in the road construction business.

III. Old Business

Review and approve minutes from the November 18, 2011 Prevailing Wage Commission meeting.

Wayburn Crabtree motioned to approve the minutes of the Prevailing Wage Commission meeting from November 18, 2011.

R.T. Summers seconded.

All approved. Motion passed.

IV. New Business

Review and discuss data from 2011 Highway & Bridge Construction Survey.

Commissioner Davis stated that during the last meeting the commission looked at the statute and made a number of motions regarding how the survey would be calculated. General Counsel, Stephanie Mitchell, went over the calculations and it is believed that there may be some minor modifications as to how it should be calculated based upon the statute.

Commissioner Davis stated that according to the statute Tennessee Code Annotated § 12-4-405:

(4) The prevailing wage rate for each area specified in subdivisions (2)(A) and (B) shall be determined by calculating the average hourly rate of pay for each classification referred to in subdivisions (3)(A) and (B). The commission shall determine the prevailing wage annually for highway construction and biennially for building construction from the documentation certified to the commission pursuant to subdivision (1). The commission, if it ascertains that current economic conditions warrant, can adjust the final wage determination as developed by the documentation certified to the commission by adding to or subtracting from the determination a percentage factor of not more than six percent (6%), based on the previous year's prevailing wage rates.

Commissioner Karla in turn with General Counsel's interpretation deems that the survey average hourly rate of pay as based upon the survey results is essentially the prevailing wage rate for the upcoming year. However if certain economic conditions warrant the commission can add or subtract 6% from that survey rate to then become the final prevailing wage rate for the upcoming year. Commissioner Davis confirmed during the last meeting, the commission motioned to take 6% from last year's prevailing wage rate and then subtract that value from the survey rate. This method was discussed during the November 16, 2011 Prevailing Wage Commission meeting. The Commission proposed that in order to arrive at the new prevailing wage rate, we would take 6% of the previous year's prevailing wage and subtract that from the survey rate to arrive at the current rate for 2012.

R.T. Summers stated that would only be true for a few categories.

Commissioner Davis reiterated that the way the statute reads that what was previously motioned on in the last meeting would be incorrect. Instead we would add or subtract 6% from the survey rate and that would become the prevailing wage rate for the upcoming year.

Commissioner Davis then stated that in previous years the prevailing wage rate is there to serve as a guide as to whether a rate should go up or down.

R.T. Summers asked if the commission would look at the Classification 01 Bricklayer and explain the interpretation of the law on how it relates. Summers stated that his motion was that Classification 01 Bricklayer, the survey rate is \$21.08 and the 6% possible change would be from the current rate of \$14.34, so his motion was that because the rate went up 47% to decrease the \$21.08 by the \$.86, that was Summers motion.

Commissioner Davis replied with that method would be incorrect. Based upon the statute because the rate went 46%, the commission would make a decision to either increase or decrease the survey rate by 6% to arrive at the new prevailing wage rate. Therefore instead of reducing the survey rate by \$.86 it would really be reduced by \$1.21, so the rate would go down.

Brent Hall stated that he assumed that the \$.86 is from the \$14.34; Commissioner Davis stated that that would be correct. Brent Hall therefore stated that the Council's interpretation is that based on the survey which resulted in Classification 01 Bricklayer increased by 47% then the commission would adjust the current survey rate (\$21.08) by reducing it 6% and that will in turn be the current rate for the 2012.

R.T. Summers mentioned that in the law it states that "the Commission may add or subtract from the determination a percentage factor of not more than (6%), based on the previous year's prevailing wage rates."

Commissioner Davis stated that is correct. Therefore the determination in this particular section of the law is the survey rate. The commission can add or subtract from the survey rate not more than 6% based upon what we know about the previous year's rate.

R.T. stated that this method is different than what has been done for 25 years.

Commissioner Davis stated that she understands that but that is why we are looking at the interpretation of the statute to make sure (was cut off by R.T. Summers)

R.T. Summers reiterated that the law states that the survey rate is "based on the previous year's prevailing wage rate, the previous year's rate has to be used.

Bob Olgebys comments that what the Commissioner and Council are stating is that the prevailing rate is based on the survey rate not the current rate.

R.T. Summers stated from the previous year's rate.

Bob Oldgesby stated that it is based on the survey. Average survey is what they are determining is the previous year's rate.

R.T. stated no.

Commissioner Davis stated that because we have been doing it differently and looking at previous years, it hasn't been a consistent way of calculating the prevailing wage rate. However what we're saying is that looking at the previous year's rate as a guideline to tell us whether or not the rate needs to increase or decrease. As for example the commission knows that a 47% increase would be extreme in terms of increasing the rate. Therefore looking at last year's rate being \$14.34, now looking at the survey it's saying it should be \$21.08 and last year's rate was much lower. The commission knows that the current prevailing wage is based upon the survey rate but the commission could reduce the survey rate by 6% according to the statute. And that's based upon what we know about the previous year's rate.

R.T. Summers stated that he believes that it is in plain English that "based on the previous year's prevailing wage rate" that this 6% rate of change is from the previous year's rate. That's

the way it's been interpreted by four governors. From Ned McQuarter on up by the commissioners and their staff. The 6% possible change has been off the current rate. I'm not sure why the commission would change that method now.

Commissioner Davis stated that she could not speak to what has happened for up until now, but what we are looking at is making sure that we are correctly interpreting the statute.

Brent Hall asked if we are provided with calculations that we will be looking at today, that are based off the survey rate.

Commissioner Davis stated yes

Commissioner Davis handed out the calculations for what the current rate would be based on the interpretation of the statute the new rates would be under the column of 2012 PW rates. Therefore for Classification 01 Bricklayer looking at last year's rate as \$14.34, the survey suggest that the rate should be \$21.08. So the commission would take 6% from the \$21.08 the new prevailing wage rate becomes \$19.82.

Commissioner Davis also reiterated that the information on this sheet that is highlighted in yellow are the classifications that have a significant change from the previous year's rate of more than 20% change. This information doesn't really change on what was motioned to change in the last meeting. It doesn't change those categories that will be adjusted it only changes how much they will be adjusted.

R.T. Summers asked a question about the staff getting in contact with Classification 11 Ironworkers Reinforcing as far as checking with the company OCCI, Inc.

Michael Dattilo answered that we contacted OCCI, Inc. and the company adamantly stated that their employees performed the work. The employer stated that they did not sub the work to any other company.

Bob Olgesby asked if the employer falsify the certified payroll.

R.T. Summers stated that the Tennessee Department of Transportation (TDOT) has documentation that OCCI, Inc. subcontracted this work. He believes that it is unfair to the taxpayers of Tennessee to raise the rate and include their data from their certified payrolls when it is incorrect. The survey that the Commission sends out can be falsified without penalty, but in the case of certified payrolls, it is considered to be a federal document.

Wayburn Crabtree stated that OCCI, Inc.'s project is being managed by consultants CEI and also its sight manger which is Construction Management System. There use to be a subcontract form that every contractor filled out for every subcontract and they would send it to us on paper and we would place on file. I'm not sure if that form is still available but he would not want to accuse a company of falsifying information without looking. It might be an entry

mistake. He looked at the certified payrolls, what he doesn't have is the link in between the subcontract form. That states that this work was subcontracted.

R.T. Summers stated that the certified payrolls listed a rebar subcontractor and the company was stating \$16.00 per hour.

Wayburn Crabtree stated that he didn't understand why the company would have turned that information in if they did not subcontract out that work. It wouldn't make any sense.

Wayburn Crabtree stated that the commission could make OCCI, Inc. pay that subcontractor that rate.

Brent Hall stated that that action would be outside of the commission's jurisdiction. That jurisdiction would fall under TDOT regulation.

R.T. Summers stated that he doesn't believe the commission can include this data (OCCI, Inc.) into the survey. Looking at the information that we have gathered and having conflicting reports with TDOT and/or certified payrolls.

R.T. Summers motioned that the OCCI, Inc. data is removed from Classification 11, Ironworkers Reinforcing.

Wayburn Crabtree seconded the motion.

Commissioner Davis looked at Rule 0800-3-2-.08(5) If the commission rejects payroll documentation submitted by a contractor pursuant to the survey conducted under § T.C.A. 12-4-405, the Commission shall notify the affected contractor or his representative, as soon as possible, of the reasons for not considering the documentation in the Commission's prevailing wage rate determination. The affected contractor or his representative shall be advised of the right to appear and testify at the public hearing relative to the prevailing wage determination. Incomplete surveys received by the Commission may be completed by the contractor or subcontractor providing the information within a reasonable time after submission, but in no case later than the date of the public hearing setting the rates.

Commissioner Davis state that because this is the public hearing setting the rates that, we the commission, have an issue.

Wayburn Crabtree stated that he has a print out from the site manager tracking system, that states that there are two subcontracts between Gilley and OCCI, Inc. There is subcontract number 5 and subcontract number 8; subcontract number 8 was for \$67,820.00 which is for light weight concrete. Subcontract number 5 is for \$152,000.00 and that is for mechanical couplers and additional work. The certified payrolls that Gilley submitted show that this company was doing reinforcing steel. There is definitely a conflict.

Commissioner Davis addressed council on that given the fact that if we reject documentation, the contractor is given the opportunity to appear and testify regarding that information at the public hearing, when in fact this is the public hearing, and the rates must be set by tomorrow, what does the commissions advice.

General Counsel Stephanie Mitchell stated we must allow the contractor/company to respond to the allegations that their information is not correct or the commission would violate the Prevailing Wage Commission rules. One way to remedy this would be to contact the company, OCCI, Inc., via phone and ask them if they choose to waive their right to appear at this commission meeting, which in turn gives the company the right to appeal the commission's decision to withdrawal the company's data from the survey.

Bob Olgesby asked if the commission could alternatively make a motion to throw out the data and except new rates contingent upon such information not coming forward to support the position and if so amend our rate for that particular classification.

Commissioner Davis stated that unfortunately the rates must be set by December 1, 2011 therefore the commission does not have that flexibility. Commissioner Davis also stated that § T.C.A. 12-4-405(5)(a) it states that the commission shall take all reasonable steps to verify the survey results submitted to it by contractors pursuant to this part and may at any time after the first holding a public hearing thereon adjust wage rates so that they reflect only survey data which is has been verified by the commission.

The Commission made a decision based on the above statute to contact OCCI, Inc. to have the company verify the information discussed.

Commissioner Davis wanted to add for the record that if the commission chooses to remove that data submitted by OCCI, Inc. from the survey the new survey rate for Ironworkers Reinforcing (Classification 11) will be \$15.86.

Commissioner Davis motioned for a recess of the Prevailing Wage Commission meeting.

R.T. Summers seconded.

All approved. Motion passed.

The Prevailing Wage Commission meeting reconvened.

Commissioner Davis asked if there was any way in TDOT's system to determine whether or not OCCI, Inc. contracted out 100% of the work to Gilley or just a portion of the work.

Wayburn Crabtree provided the information that under subcontract number 5 is to Gilley for the \$152,000 and the way that it breaks down is that the 3 are categorized as Reinforcing Steel, then they are tying it for \$13.2 cents a pound and yes that is partial. All that Gilley is performing is the tying the steel not furnishing it.

Commissioner Davis asked if it is possible that OCCI, Inc. did a portion of the work for which they have provided their data and Gilley did the other portion.

Wayburn Crabtree stated that OCCI, Inc. subcontracted 743,000lbs. and that is all of it. But they only subcontracted the installation not furnishing it, the labor portion.

Mr. Ratez with OCCI, Inc. was contacted via phone.

General Counsel Stephanie Mitchell addresses with Mr. Ratez via speaker phone and stated that the Prevailing Wage Commission needed to speak with him about the data that he submitted. The commission needs to verify the information that was submitted on the 2012 Highway Bridge Survey form. Stephanie Mitchell asked Mr. Ratez if he was comfortable giving this verification via phone. Mr. Ratez stated yes.

Wayburn Crabtree asked Mr. Ratez about contract CNJ932 in Dekalb County the rehabilitation of the bridge over the Canny Port River. Looking at our construction management system, referred to as "Site Manager", he discovered that subcontract number 5 between OCCI, Inc. and Gilley Construction of Manchester and the subcontract number 5 includes item number 604-06.01 which is the stay in place form for the lightweight concrete, item number 604-02.03 which is 743,000 lbs of epoxy coated reinforcing steel and 604-51.10 which is mechanical couplers. Subcontract number 5 between you (OCCI, Inc.) and Gilley it appears that the work was all subcontracted to Gilley.

Mr. Ratez stated that it was correct

Wayburn Crabtree stated that on the survey form that was submitted by OCCI, Inc. stated that the company was doing all the work themselves at a rate of about \$24.00 an hour.

Mr. Ratez asked what lead the commission to come to that conclusion.

Wayburn Crabtree stated that's what was placed and submitted on the survey form.

Mr. Ratez stated that our survey form is an automatically generated form that generates strictly from our payroll system based on our payroll records. Based on the entries in the field related to the type of work that their doing. Unfortunately Mr. Ratez did not have that form in front of him, so he was not sure how the commission is drawing that conclusion.

Waybrun Crabtree stated that this information obtained by the commission could be faxed to Mr. Ratez.

Mr. Ratez stated that that would be ok.

Mr. Ratez also stated that anything that we pay Gilley would or should not end up on that form. That is strictly a subcontract agreement and the form that he believed that the commission is referring to is strictly our wages.

Wayburn Crabtree stated that this is correct. The survey form that was returned to the Department of Labor is your company's wages.

Mr. Ratez stated that the form should have no employees related at all to Gilley.

Wayburn Crabtree stated to Mr. Ratez that this is what is in question.

Sue Walters with OCCI, Inc. supplied a survey form to Mr. Ratez and it is handwritten, it is signed by Mr. Ratez on October 7, 2011.

Wayburn Crabtree stated that the way the form was tabulated was that the company is showing 4,628 hours of tying reinforcing steel at a rate of \$23.81 per hour. Was this OCCI, Inc.'s work or was it subcontracted to Gilley?

Sue Walters stated that she was corrected and that on the survey form it should have been submitted as structural steel. And that our superintendent misclassified our employees. Would this clear up any confusion?

The commission stated yes.

Sue Walters stated that this is strictly our employees; Judy Stone contacted Ms. Walters that this should not have been classified as reinforcing ironworker but should be structural ironworker. Therefore Ms. Walters corrected the certified payrolls from then on and wrote Ms. Stone a cover letter to cover the certified payrolls that had already been submitted. Ms. Walters apologized for the miscommunication.

Wayburn Crabtree stated that the 4,628 hours should be Structural Ironworker (Classification 12) and not Reinforcing Steel (Classification 11).

Ms. Walters stated correct. OCCI, Inc. did not do any reinforcing.

Commissioner Davis asked the question if OCCI, Inc. Classification 12 already provided that data. Therefore is the company suggesting that the information that they provided for Classification 11 should be added to Classification 12 or is Classification 12 the complete data?

Ms. Walters stated correct. This information should be added to the 71.5. Therefore it should be 4628 hours should be added to 71.5 in Classification 12 Structural Ironworker.

Commissioner Davis stated for the record that per representatives from OCCI, Inc. indicated that the company made an error in the survey and that the information that was submitted for

Classification 11, Reinforcing Ironworkers should have instead been submitted for Classification 12, Structural Ironworkers. The 4628 hours at a rate of \$23.81 an hour for total wage of \$110,192.68 that OCCI, Inc. submitted for Classification 11 should be added to Classification 12, then the rate recalculated. Looking at the numbers of participants of only 4 responses it would not make a difference in the calculations on how we adjust the rate for Classification 12.

Brent Hall stated that Classification 11 would need to be recalculated.

Commissioner Davis stated that removing OCCI, Inc. from Classification 11 that it will change the survey rate from \$21.45 to \$15.86.

R.T. Summers stated that the commission need to go back to the previous discussion of where the law states that 12-4-405 Section 4, where it talks about the 6%. Again where it states “based on the previous year’s prevailing wage rates”, why is that law there if that’s not what the commission does? What does that phrase mean? “Based on the previous prevailing wage rate”?

Commissioner Davis stated that the Councils interpretation of that phrase means that the commission determines whether we will increase or decrease the survey rate by 6% based on the previous year’s rate. Therefore based upon what we see happen the year before the commission determines whether or not the commission is going to increase or decrease the survey rate by up to 6%.

Commissioner Davis handed out a print out of the data as it would be from what the commission voted for in the last meeting (last mtg. date). Commissioner Davis asked the commission to review the last column (*2012*) and this would be the rate as the commission voted during the last meeting. This would be the using the calculation that was purposed during the last meeting.

Commissioner Davis added additionally information looking at the Classifications that did not have enough survey responses the statute...Commissioner Davis referred to General Counsel Stephanie Mitchell.

General Counsel Stephanie Mitchell stated rule 0800-3-2-.08 states ... that any classification of a craft worker listed on the Prevailing Wage Survey form with 4 or fewer separate survey responses are received these response may be excluded from establishing the rate. Where the data is excluded the commission may continue the rate in existence at the time of survey or adjust it pursuant to T.C.A. Section 12-4-405(4).

Commissioner Davis stated that the commission voted to increase the rates by the state average but now looking at the rules the commission has the option to keep the previous year’s rate or the commission can make changes.

Brent Hall asked the commission to go through the new rates individually.

The commission went through each Classification rate separately:

Classification	Craft Number	2012
Bricklayer	01	\$19.82
Carpenter/leadsperson	02	\$16.33
Class "A" Operators	03	\$17.98
Class "B" Operators	04	\$15.74
Class "C" Operators	05	\$16.55
Class "D" Operators	06	\$15.44
Concrete Finisher	07	\$14.70
Drill Operator (Cassion)	08	\$23.13
Electrician	09	\$21.35
Farm Tractor Operator (Power Broom)	10	\$12.77
Ironworkers Reinforcing	11	\$15.86
Ironworkers (Structural)	12	\$16.60
Mechanic (Class I) Heavy Duty	13	\$20.05
Mechanic (Class II) Light Duty	14	\$18.24
Painter/Sandblaster	15	\$23.08
Powder Person Blaster	16	\$18.84
Skilled Laborer	17	\$14.51
Survey Instrument Operator	18	\$23.54
Sweeping Machine (Vacuum) Operator	19	\$14.35
Truck Driver (2 axles)	20	\$14.37
Truck Driver (3/4 axles)	21	\$13.79
Truck Driver (5 or more axles)	22	\$16.13
Unskilled Laborer	23	\$12.41
Worksite Traffic Coordinator	24	\$18.17

Brent Hall stated that there was a prior motion and second to remove OCCI, Inc.'s information from the survey.

R.T. Summers made the motion to remove the OCCI, Inc. reinforcing steel data, per the phone conversation with OCCI, Inc., Mr. Summers would like to withdraw that motion.

Commissioner Davis reiterated that OCCI, Inc. stated that the information that was submitted for Ironworkers Reinforcing (Classification 11) should have instead been submitted for Ironworkers (Structural)(Classification 12).

Bob Olegsbys made a motion that the commission accept the OCCI, Inc. information and move the data from Ironworkers Reinforcing (Classification 11) to for Ironworkers (Structural) (Classification 12).

Brent Hall seconded

All approved. Motion carried.

Bob Olgebys motioned that the commission accept the 2012 Highway & Bridge Prevailing Wage rates.

Brent Hall seconded

All approved. Motion carried. (There was one opposed – R.T. Summers)

Brent Hall motioned to adjourn meeting.

Bob Olgesby seconded

All approved. Motion carried.